

Nursing and Midwifery Council response to the Department of Health and Social Care consultation on reforming the General Medical Council's legislative framework

Summary

We are grateful to the Department of Health and Social Care (DHSC) for the opportunity to work with them on the development of this draft legislation for the General Medical Council (GMC), as a template for the reform of our own legislative framework. We also welcome the commitment that has been made by the Government to deliver new legislation for the NMC within the life of this parliament and we look forward to confirmation of the timeline for this work.

We recognise the significant progress that has been made to produce legislation that reflects proposals originally put forward by the then Government in 2021. While we recognise that the draft Order only applies to the GMC, as a template for replacing our existing legislation it would go a long way in meeting our own vision and ambitions for reform. The powers and duties in the draft Order will provide us with the tools to regulate well, in particular by allowing us to put in place a new fitness to practise process which is swifter, kinder and accords with our values. They will also support us to continue the modernisation and transformation plan that we have put in place to build a new NMC.

We particularly welcome the new powers to set our processes and requirements in rules, which would no longer be subject to approval by the Privy Council, but would instead be approved by us following close engagement with our stakeholders and robust evidence-based policy development. Having powers to approve our own rules represents a fundamental improvement, as we will no longer need to call upon DHSC's policy and legal resource, or be reliant on Privy Council and parliamentary scheduling pressures. We recognise and accept that these new powers mean new forms of accountability. These changes will be key in supporting us to become a more modern, fit for the future regulator.

Although we think that the drafting largely meets the principles previously set out by the DHSC, we do have a number of concerns about provisions that are either not clear or where we disagree with the policy approach. We have summarised our principal concerns here:

- **Powers for disclosure and publication of information:** we believe that some of the powers around publication of information are not sufficiently clear and flexible, whereas some of the duties to publish registration and fitness practise outcomes are not proportionate for public protection purposes.
- **Powers for gathering evidence:** we do not agree that removal or suspension of a registrant from the register where they refuse to provide evidence will always be the most appropriate or first course of action for public protection purposes. Where the regulator considers it necessary to reach a decision on whether fitness to practise is

impaired, it should be able to obtain a court order to obtain the evidence it needs to reach that decision. In addition we think that in order to be effective, the powers to gather evidence for quality assurance of education need to be backed by a power to seek a court order.

- **Grounds for fitness to practise action:** we are concerned about the reintroduction of health as a separate ground for action. We agreed with DHSC's previous policy position of consolidating the grounds into two broad categories, and consider that focusing on whether the registrant's health affects their ability 'to provide care to a sufficient standard' is a kinder way of identifying where health issues may require regulatory action.
- **Mandatory removal from the register:** we agree with the policy intention that there are some criminal offences which are so serious that they are incompatible with holding registration, and that a regulator should be required to remove someone from the register on conviction for those offences. With the proposed extension of the listed convictions to include a broader range of sexual offences we would like to understand more about how the DHSC have identified which offences should trigger immediate and permanent removal from the register. We also suggest that, to achieve the DHSC's policy objectives, the Order should address any ambiguity about the rights of those with convictions for listed offences to apply for initial registration (as opposed to re-entry).
- **PSA appeal powers over internal appeal panel decisions to overturn or change case examiner decisions:** to ensure that the PSA have appropriate oversight of all fitness to practise outcomes in the new framework, their appeal powers should extend to internal appeal panels' decisions to overturn or modify a case examiner outcome.
- **Commencement:** we support the GMC's position that a more flexible approach to commencement, for example via separate commencement orders, will be needed to manage the transition from one regulatory framework to another. We would not support the commencement provisions being placed on the face of the draft Order. The stability of regulatory work during a period of radical change is of paramount importance to public protection. There must be scope for regulators to phase the change in order to safeguard their regulatory functions, in the public interest.
- **Governance provisions:** we suggest that the governance drafting is ambiguous or incomplete in a small but key number of places, which are powers to appoint a Chief Executive and arrange remuneration of Board members for their duties as trustees of the regulator.

If unaddressed, we believe that the points listed above could lead to the benefits of the reforms not being realised as originally intended. We have raised further points in the course of our response. We would be very happy to discuss these points with officials in order to resolve them before we start working with the DHSC on the NMC's reforms. In addition we note that this consultation does not include details of the GMC's transitional provisions, nor a Constitution Order, which sets out important provisions relating to the unitary board such as appointment and removal of members. We would welcome confirmation from the DHSC that we will be able to consider and give our views on these in due course.

We also note that the consultation does not ask a separate question on the equalities impacts of the draft legislation, nor an articulation of the DHSC's initial thinking about impacts. We do understand that the majority of the policy underpinning this legislation

has been consulted on a number of times and that an assessment of equalities impacts is being undertaken for the current consultation. However, it will be important in due course that any impacts are published along with an action plan setting out how any negative impacts will be addressed.

We have previously discussed with the DHSC that when attention turns to the NMC's legislation there are a limited number of areas where we will need to discuss alternative drafting to that in the draft Order. This reflects the fact that in a number of respects the model of education, regulation and practice of the professions of nursing, midwifery and nursing associates is different from those regulated by the GMC. This would include the register, protected titles and related offences. We would expect this to be the case for all regulators as the work progresses.

As a whole however, the draft Order provides a clearer, more coherent approach to regulation. It largely aligns with our aspirations for regulatory reform and would provide us with the flexibility to pursue further improvements. Outlined in the response below we have set out some of the key benefits we believe the draft Order will provide for the NMC, and the ways in which it could be further improved to ensure these benefits are fully and effectively realised.

Our response to the consultation questions

Commencement

Do you agree that a specific 'coming into force' date should be included in article 2(2)(b) of the final General Medical Council Order 2026?

Disagree.

We do not support the approach as set out in the drafting. This is because, as noted in the consultation document, there are obvious advantages to giving more flexibility around commencement, for example via an Order of the Privy Council, particularly when transitioning from one system of regulation to another. This is especially the case when considering that this template will be applied to a number of different regulators, all of whom regulate different professions, have different processes, and sometimes very different volumes of caseloads.

We are aware of the GMC's position on this issue and we fully support the flexibility that they are seeking. For the reasons set out above, we are likely to need a flexible approach ourselves to commence our own legislation. Although we recognise that the DHSC will have views on the window during which commencement will need to take place, we believe that most if not all regulators will need to consider prioritisation of change for areas which will make the greatest impact, as well as considering financial cost as well as the risk of destabilising sometimes high-volume operational processes.

Governance

Separate to annual report requirements relating to equality and diversity, the draft order contains the following for GMC relating to equality, diversity and inclusion:

- a duty to ensure that, in the exercise of its functions, it applies good practice in relation to equality and diversity
- where it considers that an improvement may be required, a duty to take such steps as it considers appropriate to make that improvement
- a duty to have regard to any current or future principles set by PSA regarding equality, diversity and inclusion

Do you agree or disagree with the inclusion of these requirements in the order?

Agree.

We support the DHSC's proposal to include these requirements in the Order. We currently publish information about the work we are doing around equity, diversity and inclusion, and have a dedicated section of our website focused on this.

We value the diversity of the people on our register and it is important that our processes are fair and accessible to all. We are also clear that there is no room for any kind of discrimination in the healthcare sector, and we are committed to doing everything in our power to tackle racism and inequality and promote diversity and inclusion.

We note the inclusion of reference to having regard to 'principles' developed by the Professional Standards Authority for Health and Social Care (PSA). Currently the PSA has a specific standard (standard 3) related to EDI in their standards for regulators, which we are assessed against. Although this PSA standard is important, given that explicit reference to the PSA will be inserted into the new EDI provision at Order level, it will be important that any confusion is avoided between the PSA requirements and separate equalities legislation.

Parts 2 to 4 of the draft order relate to GMC's governance and operating functions. This includes provisions relating to:

- delegation of exercise of functions
- disclosure of information
- guidance
- annual reports
- fee setting and other financial requirements
- default powers of the Privy Council

The provisions in these sections aim to improve the efficiency of GMC's administrative functions, reducing bureaucracy.

Do you agree or disagree that the provisions set out in parts 2 to 4 of the draft order enable GMC to carry out its governance and operating framework functions appropriately?

Partially agree.

An effective governance structure is vital to the functioning of any organisation. Operational and financial independence forms a key part of this and enables us to fulfil our statutory responsibilities and to be fully accountable for all that we do. However we agree that it is important that we can be held to account, and so we support the

provisions in the legislation that will require us to perform our functions with increased transparency.

We agree with the new requirement that we set out our arrangements for public engagement, being clear about our responsibility to keep the public informed about our work. We are clear that patients, families and the public are at the heart of how we regulate. We also agree with the requirements for annual reporting to the devolved legislatures of the UK, in addition to the UK Parliament as at present.

We strongly support the proposal that regulators should be able to set their own fees in rules without Privy Council approval. We take our fiduciary and stewardship responsibilities very seriously. We need the ability to make the most effective use of the resources available to us and to be able to account for this to the public for whom we regulate and to the registrants whose fees generate those resources. The way that regulators are funded is central to ensuring our independence from government. We note that any rules regarding the setting and charging of fees rules, including those to put in place a longer-term approach, would require consultation, which we strongly support. This will ensure that regulators are directly accountable to the public and the professionals on their registers.

However, we do have some concerns that the powers for disclosure of information are insufficient when compared with the GMC's current legislation for the regulation of doctors. The Order should replicate the GMC's existing powers to publish any information relating to fitness to practise where it is in the public interest to do so, and such information may go beyond the "decisions" and "outcomes of assessment or determinations" referred to in the draft order.

Schedule 1 of the draft order includes provisions to enable GMC and MTS to effectively operate. It outlines how the GMC board may operate under the order, how committees may function and how adjudicatory bodies such as appeal panels may operate. It also puts a duty on GMC to appoint a registrar and case examiner or case examiners to exercise certain functions on behalf of GMC. In addition, the Privy Council must, by order, make further provision as to the constitution of the regulator.

Do you agree or disagree that the powers and duties in schedule 1 on constitution of the regulator are sufficient to enable GMC and MTS to carry out their functions appropriately and proportionately?

Partially agree.

We agree that the drafting largely sets out proportionate powers and duties for the constitution of the regulator. As we have stated in previous consultations we welcome the flexibility in the drafting for the regulator to determine the size and composition of its Board, as well as to be able to specify its procedures in standing orders. We do however have a number of comments, including in relation to how the drafting could be usefully clarified.

We particularly welcome the flexibility of being able to set our board's operating procedures in standing orders rather than, for example, in rules. This will provide the benefit of being able to amend how our board functions when needed. We also

welcome the powers to establish committees and sub-committees if we wish to. This power will allow for an appropriately flexible governance framework.

We note that a draft Constitution Order has not been included in the consultation. It is important that the powers within such an Order reflect the different governance model that will be put in place as compared to the current one and provide us with the right tools to operate effectively. We also note the absence of transitional provisions for the transition of members of the GMC's Council to its new Board. We look forward to being able to comment on a draft Constitution Order and transitional provisions in due course. We will also need to discuss our wider transitional approach with DHSC, including for the Board, when it turns to the NMC's reforms.

We think that the power at Schedule 1, Part 1, paragraph 2(5) about the appointment of a Chief Executive could be made clearer. Currently the drafting suggests that the Chief Executive is to be appointed by the other non-executive directors from amongst the pool of executive members. We do not think that this is what could have been intended. In order to maintain the normal flexibility by which an organisation may appoint a Chief Executive, we suggest that this drafting is amended to require the non-executive directors to ensure the Chief Executive is included in the executive members appointed to the board.

We also think that the drafting about remuneration and expenses of members at Schedule 1, Part 1, paragraph 3(2) should be amended as currently it only permits the regulator to pay members for expenses (rather than other remuneration) for undertaking their duties as trustees. It is not clear to us why the regulator's power should be restricted in this way.

The draft order proposes that the Privy Council's default powers continue to apply (they are currently contained in section 50 of the Medical Act 1983). These are powers which the Privy Council may use if it feels that GMC has failed to carry out its regulatory functions. In relation to GMC's rule-making powers in the draft order, the Privy Council will no longer be required to approve new rules or rule changes made by GMC under the draft order. However, should any future rules be deemed to require Privy Council approval, such approval will be put in place.

Do you agree or disagree that the powers and duties in the draft order in relation to the Privy Council are sufficient to support GMC to carry out its functions appropriately?

Agree.

The provisions set out in the draft Order for the default powers of the Privy Council largely mirror those which already exist in our current Order, and we are content with their inclusion.

We support the DHSC's policy approach that regulators will be able to approve their own rules without subsequent approval by the Privy Council via secondary legislation. Currently, even if we want to make a minor change to our rules, the process can take at least a year and often considerably longer. In addition, the call on both the NMC and DHSC's policy and legal resource to support such changes can be considerable. This

onerous process constrains our ability to modernise and respond in a timely manner to regulatory developments. Being able to bring our own rules into effect, following appropriate consultation and engagement, will support our aims to be a more flexible, responsive regulator.

We would however like DHSC to clarify the statement that should any future rules be deemed to require Privy Council approval, such approval will be put in place. As this would cut across one of the central tenets of the reforms, we would expect DHSC to set out the parameters and triggers for this to happen, the legal mechanism that would enable it, as well as how they would engage and inform regulators in such an instance.

PSA evidence gathering powers

The draft order, as per a recommendation of the Mann Review, provides for a consequential amendment to be made to the National Health Service Reform and Health Care Professions Act 2002 to allow PSA to have a power to compel information from GMC.

Do you agree or disagree that the draft order provides PSA with sufficient and proportionate evidence-gathering powers?

Agree.

We agree with the DHSC rationale that the power to compel information from the GMC will ensure the PSA has access to the information necessary to make decisions on exercising its right to appeal fitness to practise decisions, and also to enable a more agile approach to regulator performance monitoring. We see the new power to compel information as complementing the regulator's existing duty to co-operate with the PSA in the exercise of the regulator's functions. These duties will help the regulator to establish a clear basis for sharing personal data.

We note that the regulator's powers to require information does not extend to material which could not be compelled in court on the trial of an action (article 63(1)(b) and the AAPA Order went further to specify that the regulator could not require disclosure which contravenes data protection legislation. We would therefore suggest that consideration is given to material which the regulator may be prohibited from disclosing by or under another enactment, for example material from family court proceedings.

Education and training

Do you agree or disagree that GMC should be able to approve overseas undergraduate, foundation and postgraduate education and training programmes? This does not mean that people who take part in such overseas programmes would be given priority for places on the UK foundation programme or for speciality training in the UK, subject to a few limited exceptions in the Medical Training (Prioritisation) Act 2026.

Agree.

Our powers to approve education and training programmes overseas are limited to those run by UK education providers. We can conceive of circumstances in which it would be in the public interest for regulators to play a role in education and training in other countries. While regulators would need to consider their ability and the practicality of effectively assessing and monitoring education and training delivered overseas, we agree that in order to future proof the legislation they should have the powers to do so – particularly in combination with powers to charge already enjoyed by the GMC but not currently part of our legislative framework.

Part 5 of the draft order relates to GMC’s education and training functions. This includes provisions relating to:

- **standards in connection with practising as a regulated professional**
- **approval of education and training, an examination or assessment or a qualification**
- **supply and production of information and evidence**
- **criminal offences**
- **certification of completion of a course**
- **other related powers**

Our proposed changes aim to enable GMC to undertake more flexible and swifter education and training functions.

Do you agree or disagree that the powers and duties set out in the draft order enable GMC to carry out its education and training functions sufficiently and proportionately?

Partially agree.

Overall, the provisions set out in Part 5 provide the regulator with appropriate duties to make and maintain standards for education and training. They also provide a good range of powers to assess, approve and monitor education against those standards.

At the NMC, we would particularly welcome the power to apply conditions to approvals, as currently our only recourse is to withdraw approval from an approved education institution if there are persistent concerns it is not meeting our standards. Given the level of disruption to student learning that such a move would cause, this is always a power of last resort. We also support broad powers to make rules setting out proportionate processes for assessment and monitoring of education and training. This combination of powers will enable a more flexible, proportionate and risk-focused approach, helping to maintain safe learning environments for students and drive improvements in nursing and midwifery education.

We support the power to require a person to provide information for the purpose of our regulation of education and training. However, if an education provider (or one of their practice partners) is unwilling to provide essential information, the regulator must have the option to seek a court order for its disclosure (as the regulator can do in respect of information required for registration and fitness to practise proceedings). While the regulator may be able to encourage compliance through its power to apply conditions and ultimately revoke approval, those steps have grave consequences for students. As a result, the absence of a power to seek a court order for non-compliance may frustrate the regulator’s ability carry out its monitoring functions swiftly and proportionately.

In relation to the criminal offence for false representations of having a qualification approved by the regulator, we are unclear why the offence is limited to statements made during the period when the qualification was approved. Currently, the Nursing and Midwifery Order 2001 makes it an offence for a person to make misrepresentations about having a qualification in nursing or midwifery or as a nursing associate.¹ This gives much broader protection for the public against false claims to have professional qualifications.

Postgraduate Medical Education and Training Order of Council 2010

As a consequence of modernising GMC's register and legislative framework, many of the current provisions contained within the Postgraduate Medical Education and Training Order of Council 2010 ('the PMET Order') will become obsolete.

The draft order therefore proposes that the PMET Order is revoked, including the list of recognised specialties currently contained in the schedule to the PMET Order, and the Privy Council is given a power to specify categories of speciality in practice in the UK in an order of council.

Do you agree or disagree that the PMET Order should be revoked and the categories of speciality in practice should be set out in a new order of council?

Neither agree nor disagree.

We do not have specific views on this question as it relates to the GMC's model of specialties and registration.

Registration

The draft order provides that medical practitioners may be able to be registered despite having a complete restriction on registration. This means they will be registered as a medical practitioner but not allowed to practise. A medical practitioner may choose to have a complete restriction on their registration, or a complete restriction could be, for example, the result of failing to complete periodic assessment.

Do you agree or disagree that doctors should be able to be registered with a complete restriction on registration?

Agree.

We do not have a view on doctors' ability to choose to remain registered without any right to practice. However, we support regulators having the power to impose a complete restriction where registrants have not revalidated but need to be retained on the register while fitness to practise proceedings are concluded.

¹ Nursing and Midwifery Order 2001 (SI 2002/253), article 44(1)(c)

Part 6 of the draft order relates to registration and includes provisions regarding the process of entering the register. It also includes provisions which enable GMC to provide assurance that individuals on its register have the necessary education, training, knowledge, skills and experience required to practise safely in the UK.

Do you agree or disagree that the draft order enables GMC to carry out its functions relating to registration sufficiently?

Partially agree.

We broadly agree that the draft Order provides the regulator with the necessary powers to determine requirements for registration as well as the assurance processes to ensure that only those who have met our standards can join the register and hold registration. This should enable regulators to develop streamlined processes and set proportionate requirements for applicants, taking account of the varying circumstances of different groups of people who are applying to join or rejoin the register.

We also agree that there is information which regulators have a duty to include on the register relating to a professional and their practice, including fitness to practise related information. We welcome regulators having a duty to assess what additional information should be added to the register for the purposes of public protection. This supports an approach to registration that is flexible, consistent, and fit for the future. This would also ensure our register is transparent and accessible to the public and is more reflective of professional practice.

We welcome the provisions for dealing with applications for re-entry where it is necessary to consider whether the applicant's fitness to practise is impaired. Giving the regulator the flexibility to prescribe persons other than a panel to reach that decision in certain cases will allow for more proportionate and timely resolution of applications.

However, we do have a number of comments about the workability of the drafting for us. In relation to information to be recorded we have noted an ambiguity in that the duties to publish do not appear to give the regulator any discretion as to how long the information (including any registration measures, warnings, restrictions or enhancements) should be published for. Regulators should continue to abide by stated publication policies which balance the individual's privacy rights with the need to protect the public.

In relation to the requirements for applications for registrations, we have previously flagged that we would need to discuss alternative wording when it comes to the NMC's legislation. The current drafting requires applicants to meet the "standards of education and training" as well as the "standards applicable to registration". In our model, 'standards of education and training' are requirements about education providers and programmes, not students/applicants. Applicants for registration with the NMC must instead meet the standards of proficiency for entry to the register. We prefer this terminology because we intend these standards (which change over time) to be a reference point for practising nurses, midwives and nursing associates as well as students.

Protected titles

The draft order proposes that the titles of ‘apothecary’ and ‘licentiate in medicine and surgery’ should no longer be protected in legislation as they are not reflective of current practice. It also proposes that the title of ‘bachelor of medicine’ should no longer be protected as this is linked to a qualification rather than a professional title.

Neither agree nor disagree.

We do not have any view on this question.

Under the draft order, ‘registered medical practitioner’ is due to become a protected title.

Do you agree or disagree that ‘registered medical practitioner’ should become a protected title?

Neither agree nor disagree.

We recognise that it is not our role to decide which titles should be protected on the face of the legislation, this being the responsibility of the Government. However, we do think that protected titles play a key role in regulation and public protection. Patients, families and the public need to be confident that the person providing care for them has the right education and training, meets standards to ensure their knowledge and skills are up to date, and can be held to account if their competence or conduct falls below the expected level. A key safeguard accompanying this is that anyone falsely claiming to hold such a title can be held accountable via a criminal offence. The protected titles relating to our register have long been associated with the parts of the register. These are complemented by other offences relating to false representations about being on our register or holding qualifications in nursing or midwifery or a qualification as a nursing associate.

We were pleased to support the successful campaign on the part of our registrants and their representatives to protect the title ‘nurse’ and note that the DHSC has committed to undertake this change as part of wider reforms to the NMC’s legislation.

In line with the recommendation of the Leng Review, the draft order proposes that ‘physician assistant’ replaces the title of ‘physician associate’, and ‘physician assistant’ becomes a protected title.

Do you agree or disagree that the title of ‘physician associate’ should be changed to ‘physician assistant’ and protected in law?

Neither agree nor disagree.

We do not have any view on this question.

In line with the recommendation of the Leng Review, the draft order proposes that ‘physician assistant in anaesthesia’ replaces the title of ‘anaesthesia associate’, and ‘physician assistant in anaesthesia’ becomes a protected title.

Do you agree or disagree that the title of ‘anaesthesia associate’ should be changed to ‘physician assistant in anaesthesia’ and protected in law?

Neither agree nor disagree.

We do not have any view on this question.

To allow time for the healthcare service to implement the new titles effectively, we are proposing that the protection of the ‘physician assistant’ and ‘physician assistant in anaesthesia’ titles will commence following a transition period of 6 months after the order comes into force, if approved by Parliament.

Do you agree or disagree that there should be a transition period in relation to moving from the associate titles to the assistant titles?

Neither agree nor disagree.

We do not have any view on this question.

Should there be any protection of the ‘physician associate’ and ‘anaesthesia associate’ titles alongside the proposed new titles?

Neither agree nor disagree.

We do not have any view on this question.

Fitness to practise – mandatory removal from the register

The draft order requires GMC to mandatorily remove a registrant from its register, if the registrant has been convicted of a serious criminal offence, as set out in schedule 4 (known as a listed offence), without GMC having to investigate or MTS having to hold a fitness to practise panel hearing to determine whether the registrant’s fitness to practise is impaired.

Do you agree or disagree with the listed offences set out in schedule 4 of the draft order?

Partially agree.

We consider that mandatory removal is a sensible and proportionate step in respect of cases where a serious criminal offence has been committed, and there is no basis for the person continuing to be on the register. It requires the regulator to take immediate action to remove registrants with specified criminal convictions (for offences committed after the provisions are commenced) avoiding unnecessarily protracted fitness to practise proceedings.

We also support the consultation statement that ‘sexual assault, violence or misconduct of any kind is unacceptable’ and the government’s determination to ‘drive positive cultural change throughout the health and care service’. While the listed offences have been extended to include convictions for a wider range of sexual offences, including for sexual assault, exposure and voyeurism (whether or not the conviction culminates in a community rather than custodial sentence) other sexual offences of equal or greater

seriousness are omitted. For example, the listed offences do not include making and possessing indecent images of children, contrary to the Protection of Children Act 1978 and the Criminal Justice Act 1988 respectively, or child sex offences committed against persons aged 16 and 17 by persons in a position of trust (which will include registrants) contrary to the Sexual Offences Act 2003.

As we explain in answer to the question below, as the DHSC seeks to strengthen these provisions (by prohibiting re-entry to the register) it is important that careful consideration is given to which convictions are so serious that they should trigger mandatory and permanent removal from practice, whatever the circumstances, and which convictions can be dealt via fitness to practise proceedings.

Finally, we think the drafting should make it clearer that criminal convictions other than those specified for mandatory removal may still amount to impairment for fitness to practise purposes.

Under the draft order, former registrants of GMC who have been mandatorily removed from the register following conviction for a listed offence in schedule 4 of the draft order will not be able to apply for re-entry to the register. Exceptions would apply where the conviction has been quashed or was for a lower-level listed offence (blackmail or extortion), and the custodial sentence has been quashed and replaced with a non-custodial sentence. Do you agree or disagree that former registrants who have been mandatorily removed from the register following conviction for a listed offence should not be able to apply for re-entry to the register, save for in the limited exceptional circumstances prescribed in the draft order?

Partially agree.

We consider that mandatory removal is a sensible and proportionate step in respect of cases where a serious criminal offence has been committed and there is no basis for the person continuing to be on the register. We think it is right that the draft order also deals with the prospect of re-entry to the register after convictions of such gravity (rather than leaving it to the regulator's discretion).

Prohibiting re-entry following conviction presents a more significant interference with the individual's professional life and their right to respect for private and family life under the European Convention on Human Rights. We agree that there is strong justification for that intrusion when the individual has committed an offence which is incompatible with registration, regardless of the circumstances or how long ago it was committed.

However, as highlighted above, we do have some queries about the list of offences as amended, and whether it accurately and comprehensively reflects the convictions which should fall within the DHSC's policy of tackling the most serious criminal behaviour.

We would also suggest that, to achieve the DHSC's policy objectives, the Order should address any ambiguity about the rights of those with convictions for listed offences to apply for initial registration (as opposed to re-entry). The position is particularly unclear in relation to applicants who committed the offence before these provisions are commenced, as mandatory removal will not apply to those individuals. We note that

Social Work England's legislation stipulates that those convicted of listed offences are ineligible for registration, regardless of the date the offence was committed.² In our view, if the DHSC consider that specific offences are incompatible with registration, similar provision should be made in this legislation.

Fitness to practise – grounds for action

Grounds for action set out the basis on which regulators can investigate and take action where there is a concern about a regulated healthcare professional's fitness to practise. A regulated professional's fitness to practise can only be found to be impaired if one or more of the grounds for action are met.

The draft order proposes that the fitness to practise of a regulated professional may be impaired if the regulated professional:

- **is unable to provide care to a sufficient standard**
- **has behaved in a way which amounts to misconduct**
- **is adversely affected by a physical or mental health condition**

Do you agree or disagree with the grounds for action set out in the draft order?

We agree with two of the three grounds for action.

As stated in our response to the consultation on the AAPA Order, we support the DHSC's decision to consolidate the grounds for action into fewer, broader categories. However, we would prefer the retention of the two categories set out in the AAPA Order: inability to provide care to a sufficient standard and misconduct.

We agree that it is crucial that regulators can fully investigate cases where a registrant is unable to practise safely or has done something which amounts to misconduct. We consider that such investigation includes requesting health assessments, if the registrant's health appears to be the cause behind the concerns which have been raised. We felt that the provisions within the AAPA Order achieved this: through broad powers to investigate (including directing health assessments) and two broad grounds of impairment which direct the regulator's focus to whether the registrant can practise safely and effectively without restriction. Including adverse health as an additional and separate ground, without any link back to standards or safe practice, could create the impression that regulatory action is justified where it is not. This risks frustrating rather than promoting compassionate and proportionate management of concerns relating to health. We know from our Ambitious for Change research that disabled registrants are more likely to be referred to fitness to practise with common allegations about their health compared to non-disabled registrants.³

We also recognise the importance of safeguards within the fitness to practise process when dealing with matters relating to the registrant's health. Again, these safeguards do not require a separate heading of impairment and we note that there are no proposals to make specific provision for the handling of cases brought on the grounds of adverse health. In our view it is more appropriate for the regulator to have broad powers to handle health issues sensitively (however they arise in proceedings) for example

² Social Workers Regulations 2018, regulation 11

³ [Ambitious for change: Research into NMC processes and people's protected characteristics](#)

through powers to determine when hearings are held in private and to withhold sensitive information from publication.

Fitness to practise - proceedings

Fitness to practise proceedings are one of the primary ways by which GMC ensures public protection. The fitness to practise model outlined in the draft order aims to make fitness to practise proceedings swifter, fairer and less adversarial for GMC's registrants and people who raise concerns.

Do you agree or disagree that the fitness to practise powers and duties set out in the draft order for GMC and MTS are sufficient and proportionate for the safe and effective regulation of the professions GMC regulates?

Agree.

We strongly support the proposal for a three-stage process for assessing fitness to practise referrals, with an initial assessment stage providing powers to investigate and close a referral, followed by the case examiner stage and then the final panel consideration stage. This approach is essential for preventing cases progressing into the fitness practise process without merit, delaying resolution for both the professional involved and for members of the public.

More flexibility for case examiners to resolve cases where professionals accept the outcomes will allow us to conclude more cases at earlier stages without compromising public protection. This means that members of the public, registrants and employers involved won't need to go through the stressful process of an adversarial and lengthy panel hearing, and health and care staff could more quickly return to the workforce where it is clear there is no risk to the public.

We think that the proposed approach will support regulators to achieve a more streamlined, kinder and less adversarial approach to fitness to practise that allows regulators to focus on serious cases that require regulatory action to protect the public.

However, as raised in response to the question on part 6 of the Order (Registration), we are concerned about some of the duties to publish fitness to practise outcomes, which do not appear to give the regulator discretion to develop a fair and balanced policy on publication. For example, when case examiners have decided that a registrant's fitness to practise is not impaired and a warning is not required, we do not think it is appropriate to require the regulator to publish that outcome. In those cases, transparency will usually be served by the duty to notify the employer and other interested parties.

Interim registration measures

Under the draft order, a fitness to practise panel's powers will be extended so that the panel can impose interim registration measures during registration proceedings, as well as during fitness to practise proceedings.

This would allow the panel to impose an interim registration measure while investigating whether a register entry is fraudulent, for example.

Do you agree or disagree that a fitness to practise panel's power should be extended so that it can impose an interim registration measure during registration proceedings as well as fitness to practise proceedings?

Agree.

We are pleased that the panel's powers will be extended to address our concern that the AAPA Order did not provide a clear route to impose interim measures in incorrect or fraudulent entry cases.

Evidence gathering powers

Under the draft order, GMC may, for the purpose of gathering evidence in connection with registration, fitness to practise and interim registration measure proceedings, require a person to supply such information or produce such a document as GMC may specify. GMC will also be able to require a witness to attend a fitness to practise panel hearing or an appeal panel hearing.

Do you agree or disagree that the draft order provides GMC with sufficient and proportionate evidence-gathering powers?

Partially agree

We are pleased that the drafting provides clear powers to require information, including from a registrant. This will support regulators to progress investigations and resolve matters more effectively and efficiently.

However, we think the regulator's powers to deal with non-compliance should be broader and more clearly stated. We support the flexibility provided by the Registrar's discretion to remove an entry from the register and the regulator's separate powers to prescribe actions which can be taken in response to a registrant's failure to provide information, which can include conditions on practice, suspension or removal. However, we believe that the power to prescribe those actions should be stated more clearly, particularly with regards to how relevant provisions of other parts of the order will apply when the regulator pursues this course.

In addition, we do not agree with the removal of the regulator's power, as set out in the AAPA Order, to seek a court order in these circumstances. We disagree with the DHSC's assessment that retaining this option 'could cause confusion with the other consequences of being removed or suspended'. The draft Order already provides two options, and we believe the third, a court order, is necessary where the public interest requires that evidence is secured and a decision reached on the facts of the case, particularly where information may be relevant in relation to other registrants under investigation.

Rule-making powers

Under the draft order, GMC is able to make rules on specific procedures in relation to:

- **governance and operating framework**

- **education and training**
- **registration**
- **fitness to practise**
- **interim registration measures**
- **revision of decisions and internal appeals**

Do you agree or disagree that the rule-making powers in the draft order are sufficient and proportionate for the regulation of the professions GMC regulates?

Agree

We welcome the principle of increased autonomy in making rules and see this as one of the essential benefits of regulatory reform.

However, we are concerned that the power to make rules for actions which can be taken in relation to non-compliance should be clarified, for the same reasons as cited above in relation to prescribed actions following failures to provide information.

Revision of decisions

Under the draft order, GMC will be able to revise specific:

- **registration decisions (except emergency registration decisions)**
- **fitness to practise decisions (except fitness to practise panel decisions)**
- **case examiner interim registration measure review decisions**

Do you agree or disagree that the draft order provides GMC with sufficient and proportionate powers and duties in relation to revision of decisions?

Partially agree.

We agree that the revision powers for the majority of functions are sufficient and proportionate. The drafting makes a clear distinction between the regulator's powers to correct and update its decisions through a revision process and the separate powers to review measures (including interim measures) which flow from those decisions.

We also support the PSA being given extended powers to request revisions of case examiner decisions. This ensures public protection by providing PSA with equivalent oversight over case examiner determinations as with panel determinations

We note, however, that the DHSC does not intend to give regulators the power to make rules for the revision of decisions for education and training (refusal, applying conditions or revoking approval). We agree that the powers at article 26(5) will enable the regulator to update and correct approval decisions where necessary, in other words by varying the approval, applying conditions to it or revoking it altogether. However, we want to ensure that the regulator is not prevented from re-taking decisions not covered by article 26, for example decisions to refuse or withdraw approval. Where the regulator accepts its original assessment was flawed, the power to revise would provide a clear and swift power to correct the decision.

Appeals

Under the draft order, applicants for registration, registrants and former registrants of GMC will have rights of appeal against specific registration and fitness to practise decisions.

Do you agree or disagree that the powers in the draft order provide individuals with sufficient and proportionate appeal rights?

Partially agree.

We agree that the registrant should have appropriate rights of appeal against the new fitness to practise decision points. The provisions for internal appeal give the regulator appropriate flexibility to ensure that internal appeal rights are dealt with proportionately, (through the permission to appeal stage and in rules regarding the grounds and circumstances when decisions may be appealed). However, we believe that in some areas the link between the appeal powers and the decisions which are the subject of appeal could be made more clearly, for example the rights of appeals against re-entry decisions.

Under the draft order, as per a recommendation of the Mann Review, GMC will have a right of appeal against specific interim registration measure decisions and fitness to practise decisions made by a fitness to practise panel to the:

- High Court of Justice in England and Wales
- Court of Session in Scotland
- High Court in Northern Ireland

Do you agree or disagree that GMC should have a right of appeal to these courts against specific interim registration measure and fitness to practise decisions made by a fitness to practise panel?

Neither agree nor disagree

We agree with the policy intention that there should be a timely and proportionate route to challenge a panel decision which is insufficient to protect the public. Within the NMC's current legal framework, that is achieved via the PSA's appeal powers (as referred to in the question below).

As the regulator has a statutory objective to protect the public, we understand the argument that where the regulator considers a panel decision is insufficient for public protection, the regulator should have the right to appeal that decision, rather than inviting the PSA to do so.

However, we are mindful of the concern highlighted by the Williams Review that the regulator's right of appeal had led to a lack of trust and confidence amongst doctors in their regulator. The introduction of these appeal powers would be a significant change for the NMC and other regulators and we would want to explore how they can be operated alongside the PSA's powers to best ensure proportionality and avoid perceptions of unfairness.

In relation to appeals against decisions on interim registration measures, we support the proposal for powers to appeal decisions which cause concern for public protection. In most cases where the regulator has those concerns, it will be able to apply again when new information is obtained during an investigation. There are however some cases where the overall risk profile is unlikely to change, and we cannot ask panels to re-take their decision on the same application. In those circumstances, the right to appeal the panel's decision would address this oversight gap, whether that right is given to the PSA alone, or to both the GMC and PSA as proposed.

Given the volume of interim order applications there is a need to ensure that the right of appeal is exercised proportionately, for example by focusing on decisions where no interim registration measure is imposed. The power to bring an appeal should also reflect the nature of decisions on interim measures (which is based on a risk assessment rather than a determination of facts).

If the regulator retains an appeal power, we believe it should be phrased in more similar terms to the PSA's appeal powers and the GMC's existing powers (under section 40A of the Medical Act 1983). By specifying that the appeal is based on whether the decision is "insufficient for public protection", the regulator (and the PSA and the court) are focused on intervening only where necessary for those purposes (as opposed to creating a broader right of appeal).

Finally, we believe the following points need to be addressed in the drafting –

- The consultation document states that the order provides the regulator with a right of appeal against a panel decision on re-entry post fitness to practise removal. The GMC have this right of appeal under section 40A of the Medical Act 1983, but it is not included in article 77 of this draft Order.
- The drafting also needs to recreate the existing provisions (under section 40B of the Medical Act 1983) to permit the PSA to join an appeal brought by the GMC.

Under the draft order, a consequential amendment will be made to the National Health Service Reform and Health Care Professions Act 2002 to allow PSA to appeal specific fitness to practise and interim registration measure decisions made by a fitness to practise panel to the:

- **High Court of Justice in England and Wales**
- **Court of Session in Scotland**
- **High Court in Northern Ireland**

Do you agree or disagree that PSA should be able to appeal specific fitness to practise decisions and interim registration measure decisions made by a fitness to practise panel to these courts?

Agree.

We support the PSA retaining its existing powers to appeal panel decisions.

As emphasised in Lord Mann's review of antisemitism and other forms of racism, the reforms should ensure sufficient oversight of fitness to practise outcomes.⁴ The proposals have however left a gap, whereby an internal appeal panel's decision to overturn or modify a case examiner decision on fitness to practise (for example findings on impairment, imposing a registration measure, reviews of registration and interim registration measures) will fall outside both the regulator's revision powers and the PSA's appeal powers. To ensure the PSA's oversight is fully aligned with the new framework, its appeal powers should extend to these internal appeal decisions.

PSA power to appeal against interim registration measures

For the reasons highlighted in response to the question above (regarding the GMC attaining this appeal right) we support this extension of the PSA's rights of appeal, with the caveat that given the nature and volume of these decisions, regulators will need to work with the PSA to ensure the power can be exercised proportionately.

Under the draft order, GMC will be permitted to administer its own internal appeals function. Applicants for registration, registrants and former registrants will be able to appeal specific registration and fitness to practise decisions to an appeal panel of GMC.

Do you agree or disagree that the draft order provides GMC with sufficient and proportionate powers and duties to administer its appeals function?

Agree.

We agree that the drafting provides the GMC with appropriate powers to operate its internal appeals function. Importantly, the draft order gives appropriate flexibility to design proportionate appeal processes suited to different types of registration and fitness to practise decisions.

⁴ [Lord Mann review of antisemitism and other forms of racism in the NHS and healthcare regulatory system - GOV.UK](#)